

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BIOCHEMICS, INC. and JOHN MASIZ,
Plaintiffs,

v.

AXIS REINSURANCE COMPANY, BROWN &
BROWN OF NEW YORK, INC. and JOHN P.
RAUCCI,
Defendants.

Civil Action No.: TBD

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. SECTION 1441**

Defendant AXIS Reinsurance Company ("AXIS"), through its attorneys, Kaufman Borgeest & Ryan, LLP, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, hereby submits this Notice of Removal of Civil Action ("Notice") for Case No. 2013-0708-BLS, currently pending in the Commonwealth of Massachusetts, Superior Court Department of the Trial Court, Suffolk County (the "Action"). In support of this Notice, AXIS states as follows:

SUMMARY

1. On March 4, 2013, an action was commenced in the Superior Court of Suffolk County, Massachusetts, styled *Biochemics, Inc. and John Masiz v. AXIS Reinsurance Company; Brown & Brown of New York, Inc. and John P. Raucci*, Case No. 2013-0708-BLS (the "State Court Action"). A true and correct copy of the Complaint filed in the State Court Action is attached hereto as Exhibit "A."

2. The State Court Action seeks damages arising out of the denial of coverage under Insurance Policy No. RON764017/01/2011 issued by AXIS to BioChemics as the Named Insured with Limits of Liability of \$5 million. Plaintiffs previously provided to AXIS defense invoices for coverage under the Policy which exceeded \$300,000.00.

3. The first date upon which Defendant AXIS received a copy of said complaint was March 4, 2013. Pursuant to 28 U.S.C. § 1446(a), AXIS has attached all process, pleadings and orders that have been filed, served or received in this action as Exhibits A.

STATEMENT OF JURISDICTION

4. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332, and is one which may be removed to this Court by defendant pursuant to the provisions of 28 U.S.C. § 1441(b) in that it is a civil action between citizens of different states and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, because Plaintiffs seek to recover amounts under a policy of insurance issued by AXIS (with Limits of Liability of \$5 million) in excess of this amount, having previously demanded payment of defense expenses in excess of \$300,000.00.

5. As of the initiation of the State Court Action and at the time of removal, there is complete diversity of citizenship amongst the parties, and the Defendants are not citizens of the Commonwealth of Massachusetts.

6. Plaintiff BioChemics, Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business in the Commonwealth of Massachusetts.

7. Plaintiff John Masiz is a citizen of the Commonwealth of Massachusetts.

8. Defendant AXIS Reinsurance Company is a corporation organized under the laws of the State of New York, with its principal place of business in the State of Georgia.

9. Defendant Brown & Brown of New York, Inc. is a corporation organized under the laws of the State of New York, and with its principal place of business in the State of New York.

10. Defendant John P. Raucci is a citizen of the State of Connecticut.

VENUE

11. Venue lies in this Court because the State Court Action is pending in this district and division. *See* 28 U.S.C. § 1441(a).

TIMELINESS OF REMOVAL

12. Pursuant to 28 U.S.C. § 1441(b), a notice of removal must be filed within 30 days after receipt by a defendant of a copy of the initial pleading. AXIS received a copy of the Complaint on March 4, 2013. In any event, Plaintiffs commenced the State Court Action on February 27, 2013, and the Notice of Removal is being filed within 30 days thereof as well.

13. Pursuant to 28 U.S.C. § 1446(d), written notice of the removal of this case, attached hereto as Exhibit B, together with a copy of this Notice of Removal shall be filed with the Clerk of the Superior Court of Suffolk County, Massachusetts and shall be served on Plaintiffs.

CONCLUSION

Because Defendant has timely filed a Notice of Removal of an action for which this Court has original jurisdiction through diversity of citizenship, the Action must be removed to this Court.

Respectfully submitted,

KAUFMAN BORGEEST & RYAN LLP

/s/ Melinda B. Margolies

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned understands that the following counsel of record is not yet registered on the Court's CM/ECF database in connection with this matter. As a result, these individuals will not receive from the Court electronic notification of the filing of the foregoing Notice of Removal, filed via ECF on March 27, 2013; (2) will not have immediate access to this document through the Court's website; and (3) will receive a paper copy of the foregoing from the undersigned upon filing.

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/s/ William A. Schneider

William A. Schneider